United Nations S/2003/628

Security Council

Distr.: General
9 June 2003

Original: English

Letter dated 9 June 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/587).

The Counter-Terrorism Committee has received the third report from Spain submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-39395 (E) 170603 170603

Annex

Letter dated 30 May 2003 from the Permanent Representative of Spain to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

It is my pleasure to forward the third report of Spain to the Counter-Terrorism Committee (see appendix),* in reply to the letter from the Committee's Chair, regarding certain aspects of the status of the implementation of resolution 1373 (2001) by Spain.

I wish to advise you that Law No. 12/2003, on the Prevention and Blocking of the Financing of Terrorism, entered into force on 23 May 2003, thus completing Spanish law as regards abidance by the obligations contained in paragraph 1 of resolution 1373 (2001). The contents of this law are reported on at length in the present document.

(*Signed*) Inocencio F. **Arias**
Ambassador
Permanent Representative

* The annexes are on file with the Secretariat and are available for consultation.

Appendix

Reply to the letter from the Counter-Terrorism Committee requesting additional information from Spain pursuant to paragraph 6 of resolution 1373 (2001)

[Original: Spanish]

1.2/a Criminalization of the financing of terrorism: paragraph 2 (d) of resolution 1373 (2001). The CTC would appreciate information on legal provisions which criminalize the preparation of terrorist acts on Spanish territory for commission abroad.

Spanish law establishes "universal competence" to criminalize the preparation of terrorist acts in Spain for commission abroad or outside Spanish territory:

Article 23.4 of Organic Law 6/1985 of 1 July 1985, on the judiciary, gives Spanish judges and tribunals jurisdiction over acts committed by Spanish nationals or foreigners outside Spain that are categorized as acts of terrorism under Spanish law.

Article 579 of the Penal Code (Organic Law 10/1995 of 23 November 1995), as amended by Organic Law 7/2000 of 22 December 2000, establishes in paragraph 1 that provocation, conspiracy and proposition to commit the crimes set forth in articles 571 to 578 — crimes of terrorism — are punishable by a sanction which is one or two degrees lower than that corresponding, respectively, to the actions referred to in the previous articles.

The commission of the crime abroad does not rule out punishment for the crime in Spain, provided that the initiation of the commission of the crime occurred in Spain, in the case where an attempt or a conspiracy of two or more persons to commit a crime also occurs in Spain or in the case of provocation, conspiracy or proposition to commit a crime (principle of territoriality in respect of the competence of the Spanish judiciary, as set forth in article 23.1 of Organic Law 6/1985, on the judiciary).

Article 16.1 of the Penal Code (Organic Law 10/1995 of 23 November 1995) defines as an attempt to commit a criminal offence every direct and exterior act of initiation of the commission of the crime which implies the performance of all or part of the acts that should objectively lead to the production of the pursued result, but which result is not finally produced by conditions independent from the will of the offender. Article 62 of the Code provides that an attempt to commit an offence is punishable by a sanction which is one or two degrees lower than the prescribed penalty for a consummated crime, to the extent deemed appropriate, with due regard to the danger inherent in the attempt and the degree of execution reached.

Also noteworthy in this regard is article 573 of the Penal Code, which provides a penalty of 6 to 10 years' imprisonment for the storing of weapons or munitions or the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose by persons belonging to, acting at the service of or in collaboration with armed bands or terrorist organizations or groups.

1.2/b Status of ratification by Spain of the International Convention for the Suppression of the Financing of Terrorism

The Kingdom of Spain deposited its instrument of ratification of the International Convention for the Suppression of the Financing of Terrorism on 9 April 2002. The instrument of ratification was published in the *Official Gazette* on 23 May 2002.

The Spanish legal system uses a system for automatic reception of international treaties; it is not necessary, therefore, to adopt an internal law in order for these treaties to produce a direct effect on our system. The official publication of the text of a treaty is sufficient authorization for the jurisdictional organs to apply it with the full effect of domestic law.

To that end, article 96.1 of the Spanish Constitution provides that "Validly concluded international treaties, once officially published in Spain, shall constitute part of the internal legal order. Their provisions may only be abolished, modified or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law".

Indeed, on 23 May 2003, the *Official Gazette* published Act 12/2003, of 21 May, on the Prevention and Blocking of the Financing of Terrorism, and complementary Organic Law 4/2003, of 21 May, whose intent, in line with the commitments undertaken by Spain, in particular those derived from Security Council resolution 1373 (2001), is to strengthen the legal framework for the prevention and blocking of the financing of terrorism.

The principle underlying Act 12/2003 (which is analysed in more detail in section 1.4 of this report) is simply to make it possible to block any type of financial flow or account in order to prevent the use of funds in the commission of terrorist acts, and at the same time to help identify and combat the financial channels used for terrorism, verify the true nature of funds, including their origin, location, placement and movements, or the identity of the real authors of such transactions.

1.3 Status of ratification by Spain of the United Nations Convention against Transnational Organized Crime

The Kingdom of Spain deposited its instrument of ratification on 1 March 2002. It was published in the *Official Gazette* as soon as the depositary of the Convention gave notice of the entry into force of the Convention.

1.4 Protection of the economic and financial system

In Spain the obligation to report suspicious transactions applies not only to financial institutions but also to the following entities, pursuant to Act 19/1993 on specific measures for the prevention of money-laundering (which expressly covers the activities of terrorist organizations, art. 1.1) and the regulation approved by Royal Decree 925/1995 on the obligation to report suspicious transactions:

- Credit entities;
- Authorized life insurance companies;
- Securities brokerage firms and agencies;
- Mutual investment institutions;

– Management firms for mutual investment institutions and pension funds;

– Portfolio management companies;

– Credit card companies;

– Natural or legal persons who exercise currency exchange activities, whether or not as their principal activity;

– Casinos;

– Real estate firms;

– Traders in precious stones and metals;

– Antique and art dealers.

In addition, notaries are required to report suspicious transactions, by the order of the Ministry of Justice of 10 December 1999.

In addition, the forthcoming statute implementing Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001, which is about to be adopted by the Spanish parliament, will extend the notification obligation to cover:

• Auditors, external accountants and financial advisers;

• Independent legal professionals (lawyers) who exercise the following activities:

(a) Advising on the planning or execution of transactions for a client in connection with the following activities:

1. Purchase or sale of real estate or businesses,

2. Management of capital, assets or securities,

3. Opening or management of bank or savings accounts, management of securities,

4. Accumulation of capital for the formation, functioning or management of companies,

5. Formation, functioning or management of companies, trusts or the like;

(b) Acting for and on behalf of a client in financial or real-estate transactions.

Reporting and notification obligations in the case of suspicious transactions apply not only when money-laundering activities are suspected but also when particular circumstances are present. All credit institutions, life insurance companies, securities brokerage firms, mutual investment institutions and pension funds, portfolio management companies, credit-card companies and currency exchange facilities are required to notify the Financial Intelligence Unit in the following cases, regardless of whether money-laundering is involved:

(a) When transactions involve the physical movement of coins, banknotes, travellers cheques, and cheques or other documents issued by a credit institution and made out to bearer (with the exception of credit documents for debit in the account of the client) if the amount involved is over 30,000 euros or the equivalent in foreign currency;

(b) When transactions are with natural or legal persons who or which are resident in territories considered tax havens, pursuant to Royal Decree 1080/1991, of 5 July 1991, if the amount involved is over 30,000 euros or the equivalent in foreign currency;

(c) When transactions are with or by natural or legal persons who or which are resident in countries deemed uncooperative by the Financial Action Task Force (FATF).

On 24 May 2003, after publication in the official gazette, Act 12/2003, of 21 May, on the Prevention and Blocking of the Financing of Terrorism entered into force, as did supplementary Organic Act 4/2003 modifying a number of the provisions of Organic Act 6/1985 on the Judiciary and Act 29/1998 regulating administrative jurisdiction.

The Prevention and Blocking of the Financing of Terrorism Act was drafted and adopted specifically to comply with the obligations provided for in resolution 1373 (2001), paragraph 1 (a) and especially paragraph 1 (c). As the legislator notes in the explanatory introduction to the new Act, international commitments, together with the experience of Spain, make it necessary for the Spanish legal order to be supplemented with effective measures for the prevention of this form of crime.

The above measures represent a continuation of the policy of preventing and avoiding particularly serious forms of crime and are closely related to Act 19/1993 on the Prevention of Money-laundering and Act 40/1979 on Exchange Control.

Under article 2 of this Act, assignment of the power to freeze balances and block financial transactions in the case of specific persons rests with an administrative collegial body, the Commission to Monitor Terrorism Financing Activities. It is a preventive measure, devoid of any punitive element, the purpose being not to establish a judgement of culpability but to prevent the commission of criminal acts and thereby provide an early warning.

Article 1 ("Blocking capital transactions and banning the opening of accounts in financial entities") provides for the blocking or freezing of transactions, accounts, balances, financial positions and withdrawal, payment or transfer operations in which the person ordering, issuing, holding, benefiting from or receiving is an individual or entity associated with a terrorist group or organization, or when a transaction, movement or operation has been carried out for the purpose of perpetrating terrorist activities or in order to help achieve the goals pursued by a terrorist group or organization.

Decisions on blocking/freezing and banning the opening of accounts remain in effect for the period expressly determined by the monitoring Commission. If the decision in question is based on a decision by a competent body of the European Union or other international organization of which Spain is a member, the duration shall be as determined by the international organization. In other instances, its duration shall not exceed six months but can be extended, subject to judicial authorization, by the monitoring Commission (art. 2).

The above powers are to be exercised without prejudice to the competence of the judicial branch to review the appropriateness, purpose and proportionality of the administrative action ex post facto, to prosecute and try the perpetrator and to protect the rights of citizens (art. 3, jurisdictional review).

These powers may be applied where there are reasonable grounds for suspecting that a person or operation has been involved in the financing of terrorist actions, either because of his or its inclusion in lists put out by international organizations of which Spain is a member, or because of the presence of subjective and objective elements specified in article 7 of the Act.

The monitoring Commission is attached to the Ministry of the Interior. The Secretary of State for Security is its Chairman, the membership consists of representatives of the Public Prosecutor's Office and the Ministries of Justice, the Interior and Economic Affairs, and the Director of the Executive Service of the Commission on the Prevention of Money-laundering and Currency Violations acts as Secretary (art. 9).

In order to ensure that the blocking or freezing measures are effective, article 4 of the Act imposes various requirements for cooperation with the Commission (supplementing those in Act 19/1993) by the following entities:

- Government services
- Credit and insurance companies
- Investment service enterprises
- Mutual investment institutions and their management companies
- Foreign currency exchange establishments
- Entities that issue digital money
- Pension fund management companies
- All persons referred to in article 2 of Act 19/1993 on the Prevention of Money-laundering.

Article 8 of the same Act requires that the following entities should submit to the monitoring Commission any personal data and information they may obtain in the course of their official duties:

- Tax departments
- Administrative entities and the General Treasury of the social security system
- The Bank of Spain
- The National Stock Exchange Board
- The Directorate-General of Insurance and Pension Funds
- All organs and bodies responsible for financial oversight.

The files which the monitoring Commission establishes in order to comply with the provisions of this Act shall have the status of publicly owned files, in accordance with Organic Act 15/1999, of 13 December 1999, on the Protection of Personal Data Act.

1.5 Implementation by Spain of international best practice, codes and standards which are relevant to the implementation of resolution 1373.

On 25 April 2002, the Director-General of the Treasury in the Ministry of Economic Affairs conveyed the FATF document entitled "Guidance for financial

institutions in detecting terrorist financing" to the Spanish Banking Association and the Spanish Confederation of Savings Banks (CECA) with the request that it should be circulated as widely as possible among their members.

In addition, the Secretary of State for Economic Affairs conveys periodically to financial institutions the updated lists of persons and entities whose assets should be frozen.

1.6 Questionnaires submitted by the Spanish authorities to international organizations responsible for monitoring compliance with international standards.

- Annex 1. The questionnaire prepared by the Directorate-General of the Treasury in the Ministry of Economic Affairs on the eight special recommendations of FATF entitled "Self-assessment Questionnaire: FATF Special Recommendations on Terrorist Financing".
- Annex 2. Reply to the questionnaire on the evaluation of national provisions to combat terrorism (questionnaire prepared for the European Union by the Ministry of the Interior).
- Annex 3. Spain's assistance programmes in the area of combating terrorism.